



KAHEA

THE HAWAIIAN-ENVIRONMENTAL ALLIANCE

PROTECTING

NATIVE HAWAIIAN

CUSTOMARY &

TRADITIONAL RIGHTS

AND OUR FRAGILE

ENVIRONMENT

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KAHEA: the Hawaiian-Environmental Alliance is a non-profit 501(c)3 working to protect the unique natural and cultural resources of the Hawaiian islands. KAHEA translates to English as "the call."

Mr. Jeff Melrose
Ms. Deborah Chang
P.O. Box 202
Pa'auilo, Hawai'i 96776-0202

October 29, 2009

Aloha Pumehana Mr. Melrose,

On September 9, 2009, we the undersigned, each received from you and Ms. Chang individual certified letters requesting our comments on the University of Hawai'i's "public access plan" for the summit of Mauna Kea. As we explained to you and Ms. Chang in numerous telephone and email conversations, we are not able to consult with you at this time as we are constrained by the various legal proceedings regarding the Board of Land and Natural Resources' management of the public land on Mauna Kea.

These legal proceedings will include questions regarding the University's attempt to control public access to the publicly held lands in the Mauna Kea Conservation District, such as the plan you and Ms. Chang are developing on behalf of the University. Thus, to protect our rights in court, we must refrain at this time from commenting on this public access plan.

As we explained to you and Ms. Chang this summer, the University is aware that the legal adequacy of their new plan for the summit is in question. Several individuals and organizations requested a contested case hearing on the plan in April. This legal process is still underway. Our appeal to the Third Circuit Court was filed in October.

The University has also long been aware of the legal constraints on our ability to comment on the various plans they have for Mauna Kea. The legality of the University's activities in the Mauna Kea Conservation District have been the subject of several court cases since 2002. This includes the appeal to the Intermediate Court of Appeals initiated by the University in 2007.

Although the University has lost every court case that has been decided regarding the management of Mauna Kea, the University continues to try to further its development plans for the summit. Throughout these many flawed attempts, the University has claimed to value our input, but has refused to guarantee that the information we provide is not used in court. Rather, the University expects that we forfeit our legal arguments in court, so that we may comment on proposals that the University is not authorized to draft or implement.

Until our cases are decided in court, our comments on the University's public access plan must be limited to what we have already discussed with you and Ms. Chang, which we understand to be: